



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
DAVID C. HOLLISTER, DIRECTOR

LINDA A. WATTERS
COMMISSIONER

April 12, 2006

The Honorable Kevin A. Elsenheimer
State Representative
State Capitol
P.O. Box 30014
Lansing, MI 48909-7514

Dear Representative Elsenheimer,

Thank you for your recent letter regarding testimony that you received recently before the House Tort Reform Committee concerning the medical malpractice report mandated by MCL 500.2477d. I read with interest your letter and the attachments.

In response to recent inquiries stemming from the testimony offered at your Committee hearings, I requested that OFIS staff dig into our files in order to glean the exact reasons why this report was not reissued by the Insurance Bureau from 1991 to 1999, or OFIS since 2000, as required by MCL 500.2477d.

OFIS staff have informed me that while the MCL 500.2477d report itself has not been issued, some of its components were in fact produced by the Agency as part of an annual report concerning the state of competition in the commercial liability market, over a number of years. These reports contained sections that described the condition of the medical malpractice insurance market in Michigan as it would appear to have been envisioned by MCL 500.2477d(a). Copies of these reports remain on our Web site for your review at www.michigan.gov/ofis.

While these reports were produced by the agency for a number of years, legislation in the early 1990's eliminated the report requirement in favor of a bi-annual statement regarding the degree of competitiveness in the commercial liability marketplace in Michigan.

Admittedly, my review of this information leads me to the conclusion that this information does not satisfy the remaining requirements of MCL 500.2477d, which has caused me to take steps which I will more fully describe herein that will bring OFIS into substantial compliance with our statutory obligations.

Before discussing how the challenge before us will be rectified, I would like to take this opportunity to briefly provide you with some historical information that OFIS staff was able to piece together as they researched this issue in order to provide some additional context.

Background

OFIS staff has ascertained that there are three principle reasons why only a single report was issued:

1. The requirement that the agency be supplied identical information from multiple sources significantly complicated the Bureau's ability to verify information and eliminate double or triple counting of the same claims.
2. The Bureau only had the authority to compel participation by insurance carriers and not the other sources required to submit information.
3. In light of #1 & #2, it appears Insurance Bureau staff made the determination that it was impossible for the information that was being collected to be verified.

Insurance Bureau staff were clearly aware that these issues posed significant challenges to the successful issuance of this report, as evidenced by the fact that one of the Commissioner's recommendations in the original 1989 report was that the legislature amend the Code to require that insurers be named the single reporting source.

It appears that the original decision not to issue the 1991 report was made under Commissioner David Dykehouse, and successive Commissioners including Patrick McQueen (acting), D. Joseph Olson, D.A. Annunzio (acting), E.L. Cox, Frank Fitzgerald, and Ronald C. Jones (acting), all acquiesced to this initial determination.

National Practitioner Data Bank

OFIS staff is also of the belief that much of the information required to be collected by MCL 500.2447d is also collected and made publicly available by the NPDB, an electronic database maintained by the Health Resources and Services Administration (HRSA), within the Department of Health and Human Services. In my discussions with my staff, I understand that as this resource has become more fully populated with data, OFIS staff has come to believe that it is a superior resource that has made the MCL 500.2447d report of limited utility.

After having listened to their rationale, I take issue with this conclusion. First, it appears that the NPDB includes many—but not all—of the same data elements that are collected for the MCL 500.2447d report. Specifically, the database does not include the defendants, age, sex and type of injured party, whether the physician was employed by a hospital, whether a physician is covered under a hospital's policy and the amount paid by an uninsured co-defendant. In this regard, therefore there isn't an "apples-to-apples" comparison. Obviously, the existence of the NPDB also does not absolve OFIS of its obligation to comply with the provisions of Michigan law.

Secondly—and more importantly—I have a fundamental problem with the Agency selectively following the provisions of the Code because of a well-intentioned belief that the information is available elsewhere. I simply find this unacceptable.

Current Status

After having reviewed the historical background and development of this issue within what was the Insurance Bureau and now is OFIS, I certainly agree with the fact that the status quo is not acceptable and I have instructed senior staff within the Office of Policy, Conduct and Consumer Assistance to pull together an action plan that would bring the agency into substantial compliance with the requirements found in the Insurance Code.

Broadly speaking, here are the key next steps that OFIS will take to come into substantial compliance with MCL 500.2477d as soon as possible:

- I have instructed my staff to immediately begin working on a Request for Proposal as soon as possible.
- OFIS staff is pulling together all copies of IBA 210 A & B forms that are still either in our possession or are stored at the Records Center.
- Once a consultant is selected, they will:
 - enter the data into a database;
 - prepare an analysis of the data pursuant to the requirements of MCL 500.2447d;
 - identify any problems with the quality of the data reported;
 - assess the overlapping nature of the submissions by source;
 - assess the overlapping nature of information contained in the NPDB;
 - provide OFIS with process improvement recommendations;
 - using free information contained on the NPDB, to the extent possible, conduct a parallel analysis to supplement the data submitted pursuant to Michigan law.
- OFIS Policy staff will produce the market analysis component of the report, as required by MCL 500.2447d(a).
- Based on the results of the foregoing, OFIS staff will make a series of recommendations concerning the medical malpractice insurance market in this state pursuant to MCL 500.2447d(c).

In order to avoid some of the pitfalls that the agency ran into in 1991-1992, we are exploring what steps we can take that would provide us as clean a data set as possible, while still effectuating the key thrust of this section of the Code. While this may involve focusing our attention on the data provided to us by the insurance industry—rather than those outside our regulatory umbrella—I hope that you will agree that this would certainly be a significant improvement over the status quo. Once we have a consultant available to begin analyzing this data I should have a much better idea of what changes are necessary for the ultimate success of this project.

If we find that redundancy remains an insurmountable obstacle, I hope that you would consider sponsoring legislation that would eliminate the redundant provisions of the Code. If this is the

case, I will ask Krystal Rourke, Deputy of my Policy Division to contact your office to discuss this further.

I would like to also take this opportunity to mention that I have instructed OFIS staff to develop a secure, online submission functionality such that future submissions could be done electronically rather than by the current paper-based system. This should result in less work and lower cost for all parties involved and provide OFIS with a constantly-updated database upon which to base future analysis for future reports.

I want to take an opportunity to thank you for raising this issue directly with me. While I certainly can't change the fact that past reports haven't been issued, now that the issue has come to my attention, I can and will bring OFIS into compliance with the spirit of the Code at our earliest opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda A. Watters", with a long horizontal flourish extending to the right.

Linda A. Watters
Commissioner

cc: Joe Hune, Chairman
House Insurance Committee

Mike Bishop, Chairman
Senate Banking and Financial Institutions Committee

Bob Swanson, Acting Director
Department of Labor and Economic Growth